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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

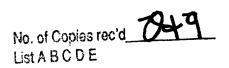
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
Geographic Partitioning and Spectrum) WT Docket No. 96-148
Disaggregation by Commercial Mobile)
Radio Services Licensees)
)
Implementation of Section 257 of the) GN Docket No. 96-113
Communications Act)
Elimination of Market Entry Barriers	DOCKET FILE COPY ORIGINAL

COMMENTS OF AIRGATE WIRELESS, L.LC.

AirGate Wireless, L.LC., ("AirGate Wireless") hereby submits its comments in support of the Commission's proposed rulemaking to permit partitioning and disaggregation of spectrum by entrepreneurs in the broadband PCS C and F blocks.\(^1\) AirGate Wireless is a small business that has participated in all three phases of the broadband PCS entrepreneur's block auctions. AirGate Wireless' affiliate, AirLink, L.L.C., participated in the initial C block auction and submitted a \$20 Million upfront payment. AirLink withdrew from the C block auction in round 42 due to the continued escalation in bid prices that it found to be unreasonable. AirGate Wireless participated in C block reauction but again chose to withdraw from the auction based on the inflation of bid prices. AirGate Wireless is a qualified bidder in the D, E and F block auctions and submitted an upfront payment on August 12, 1996.

¹ In the Matter of Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, Implementation of Section 257 of the Communications Act -- Elimination of Market Entry Barriers, *Notice of Proposed Rulemaking*, WT Docket No. 96-148, GN Docket No. 96-113 (rel. July 15, 1996) (the "Notice").



AirGate Wireless' comments are limited to the proposals in the Notice for the partitioning and disaggregation of broadband PCS spectrum by entrepreneurs in the C and F blocks. With a few exceptions, AirGate Wireless believes the Commission has proposed a reasonable and fair approach to partitioning and disaggregating spectrum that will foster additional opportunities in PCS for small businesses.

I. The Proposals in the Notice Will Create Valuable Additional Opportunities for Small Businesses to Participate in Broadband PCS

AirGate Wireless strongly supports the Commission's proposals to permit broadband PCS licensees to geographically partition and disaggregate spectrum. The proposals in the Notice, if adopted, will create a whole wealth of new opportunity for small businesses, like AirGate Wireless, to enter the broadband PCS business and assemble different license clusters. It also provides existing licensees the ability to refine their business plans to reflect advances in technology and changing market conditions. Some PCS licensees may find that 30 MHz of spectrum is an overabundance of spectrum in certain markets. Partitioning and disaggregation will permit these licensees to reduce their licensed spectrum and operating costs while liberating spectrum for another entrepreneur's use and creativity.

A. The Five Year Entrepreneur Requirement Is Essential To Create Opportunities for Small Businesses

AirGate Wireless believes the proposal in the Notice to permit spectrum in the C and F blocks to be partitioned and disaggregated only to other entrepreneurs for at least the first five years is critical.² Without this restriction, C and F block license holdings could quickly be

² AirGate Wireless also supports the imposition of unjust enrichment penalties for spectrum partitioned or disaggregated to non-entrepreneurs after the fifth year of licensing.

diminished and transferred to large companies and the long term opportunity for entrepreneurs would be lost. In addition, without this restriction, entrepreneurs seeking to acquire partitioned or disaggregated spectrum in the C and F blocks would have to compete against large companies thereby limiting another license opportunity for entrepreneurs. The five year requirement proposed by the Commission for the C and F blocks is consistent with the Commission's transfer restrictions for the entrepreneur's blocks and essential to the entire concept of providing opportunities for small businesses and entrepreneurs to not only acquire licenses but operate broadband PCS networks.

B. License Terms Should Follow the Partitioned and Disaggregated Spectrum

AirGate Wireless endorses the Commission's proposal to make the license term equivalent for the original licensee and partitioned or disaggregated licensee unless the new licensee has other broadband PCS licenses and chooses to use that license term for all broadband PCS licenses. The extension of the renewal expectancy to the new licensee also is warranted and essential for entrepreneurs to achieve long-term financing and develop long term business plans.

C. Geographic Partitioning on Boundaries Other Than County Lines Should Be Permitted for BTA Licenses

The Commission's proposal to permit geographic partitioning along county lines is a good approach for the MTA licenses, however, many BTAs are included in one county.

Accordingly, especially in the case of BTAs, the Commission should permit the parties to propose an alternative boundary for geographic partitioning in their assignment application.

II. Certain Proposals Should Be Modified to Recognize the Capital Constraints of Small Businesses

In developing rules for partitioning and disaggregation, especially in the C and F blocks, the Commission must be cognizant of the capital constraints of small business entrepreneurs. These limited resources will require most small businesses to obtain commercial credit to acquire partitioned or disaggregated spectrum. In addition, capital constraints will inhibit small companies from providing guarantees to the Commission for the original licensee's auction-related obligations.

AirGate Wireless recommends the following four proposals in the Notice be modified to provide the opportunity for small businesses and entrepreneurs that the proposals are intended to create:

(1) The partitioned or disaggregated spectrum should be endowed with its own license independent free and clear of the remaining and unassumed obligations of the original licensee. (The Commission has proposed such an independent approach in dealing with compliance with construction requirements.³) For example, a small business who negotiates an agreement to purchase 10 MHz of spectrum from the small business licensee of a 30 MHz C block license should not have the validity of its license for the disaggregated spectrum jeopardized by a default of the original licensee. Such as cross-default provision would limit any acquirer's ability to obtain financing and would place the risk of the original licensee's business on the purchaser. Assumption of this magnitude of risk will defeat the Commission's goal for permitting disaggregation and partitioning of spectrum to create additional opportunities for small business

³ Notice at para. 55.

entrepreneurs.

- (2) Similarly, the acquirer of partitioned or disaggregated spectrum should not be required to guarantee the payment of the obligations assumed by the original licensee in the auction. In the Notice, the Commission asks whether each party should be required to guarantee all or a portion of the original auction-related obligation. A requirement that the purchaser of partitioned or disaggregated spectrum guarantee the auction-related obligations of the original licensee would eliminate the opportunity for small businesses to acquire partitioned and disaggregated spectrum. Guarantees properly would be viewed by lenders and investors as injecting a level of unacceptable risk to the acquirer especially when it requires the new licensee to guarantee payments by the original licensee -- an entity over which it has no control.

 Accordingly, requiring a guarantee of original auction-related liabilities as a condition to partitioning or disaggregation would negate the intent of the proposed rules.
- (3) A requirement of an accelerated payment also would impede small business opportunities that the Commission hopes to create by permitting partitioning and disaggregation. It is likely that any negotiated agreement to disaggregate or partition spectrum will include a "payment" price separate from the cost of assuming a portion of the remaining financial obligations of the original licensee. This payment price should demonstrate the market-based valuation of the spectrum by the purchaser and the purchaser's intent to honor its portion of the license costs. Just as in an auction, parties should not be assumed to make a purchase if they have no intent to use the spectrum. Accordingly, the need to keep the license in "good standing"

⁴ Notice at para. 26.

should serve as a deterrent to future defaults. To deter agreements made solely to avoid license liability, the Commission could require the filing of the purchase agreement with the assignment application that sets forth the purchase price and ongoing obligations of the parties.

(4) For broadband PCS, disaggregation of less than 5 MHz should not be permitted. AirGate Wireless is unaware of a broadband PCS technology that today could operate on 1 MHz of spectrum. Generally, 10 MHz is seen as the minimum amount necessary to carry voice traffic effectively in most markets. Permitting disaggregation in 5 MHz segments would permit someone to acquire and aggregate 5 MHz blocks but not permit unrestrained division of the spectrum without regard to the service. At least in the short term (*i.e.* the next five years), AirGate Wireless recommends that the Commission not permit disaggregation of less than 5 MHz blocks. The Commission could modify or waive this requirement upon a showing that smaller amounts of spectrum are appropriate for broadband PCS.

III. Conclusion

AirGate Wireless as a veteran of the entrepreneur's block auctions endorses the Commission's proposals in the Notice to permit PCS licensees to partition and disaggregate broadband PCS spectrum. As in the auction, and consistent with the transfer restrictions on C and F block licenses, the partitioning or disaggregation of spectrum by entrepreneurs should only be permitted to other entrepreneurs for the first five years. In recognition of the capital constraints that entrepreneurs face, the Commission should modify certain of its proposals in the Notice so as not to extract a financial price for partitioning and disaggregation that will eliminate the opportunity the proposals will create.

AirGate Wireless looks forward to the swift adoption of these rules.

Respectfully submitted,

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August 15, 1996